

171



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,329	02/20/2004	Harlan Cosner	COS-2.007	6922

22874 7590 06/16/2004

BRADLEY M GANZ, PC
 P O BOX 10105
 PORTLAND, OR 97296

EXAMINER

BELL, KENT L

ART UNIT PAPER NUMBER

1661

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/783,329	Applicant(s) COSNER ET AL.	
	Examiner Kent L. Bell	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- application filed 2/20/04*
- 1) ☒ Responsive to ~~communication(s) filed on~~ ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/20/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

K.L. Bell

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

Detailed Action

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, line 23, Applicant states seed parent was "Pink" and pollen parent was "Scarlet". It is not understood whether the entire seed parent is pink in coloration and the entire pollen plant is scarlet in coloration or if their respective flowers are pink and scarlet in coloration. Correction and/or clarification is necessary.

B. Applicant should set forth in the specification a brief comparison between the instant plant and its parent cultivars, 'P-M-BR-3' and 'P-BR-318'. Such comparison need not be in any

Detailed Action

great detail but should at least distinguish the plants from one another. The recitation “seed parent was Pink and the pollen parent was Scarlet” on page 1, line 23 is insufficient in this regard.

C. Page 2, lines 1 and 2, Applicant states the instant plant was first asexually reproduced but does not set forth the manner in which it was asexually reproduced. Applicant should set forth in the specification the manner in which the instant plant was first asexually reproduced (MPEP). It is noted that applicant has stated “successive asexual generations produced from cuttings” but this does not set the manner in which the instant plant was first asexually reproduced.

D. Page 2, lines 2 and 3, Applicant should insert - -and reproduced true to type- - after “stable”, if such is accurate, as the instant plant needs to be an exact duplicate of the original ‘TiCoPink’ cultivar.

E. Page 2, line 9, Applicant should delete “US PP” and insert - -U.S. Plant Patent- - so as to clearly set forth that the U.S. Patent being referred to is a U.S. Plant Patent.

F. Page 3, lines 4 and 5, Applicant should set forth in the specification the age of the plants when described.

Detailed Action

G. Page 4, lines 9-12, Applicant should set forth in the specification additional information relative to the instant plant's stems including the typical and observed stem length.

H. Page 5, lines 16 and 17, and page 7, Chart 1, lines 20 and 21, Applicant states "deep" and "Deep". It is unclear what applicant is intending "deep" to mean. It appears applicant may have intended to state - -long- -. Correction and/or clarification is necessary.

I. Page 5, lines 16 and 17, and page 7, Chart 1, lines 20 and 21, Applicant should set forth in the specification the typical and observed petal and petaloid length.

J. Page 5, lines 16-18, and page 7, Chart 1, lines 19 and 20, Applicant should set forth in the specification additional information relative to the instant plant's petaloids including the typical and observed petaloid shape, length, width, and apex, base, and margin descriptors. The information set forth on lines 16-18 of the same page only refer to petals. It is noted that applicant has stated "Petal/Petaloid -Size" on line 19 of Chart 1 which is inconsistent with the information set forth on page 5, lines 16-18.

K. Page 5, line 19, Applicant should delete "," and insert - -.- -.

Detailed Action

L. Applicant should set forth in the specification information relative to the instant plant's flowers including the typical and observed flower diameter and depth.

M. Page 6, line 11, It appears applicant left out a color designation after "to" especially as applicant has set forth a color designation on page 8, Chart 1, line 3. Correction is necessary.

N. Page 7, Chart 1, line 1, Applicant states "Color is between 145D". However, applicant has previously stated "translucent and lighter than 145D" on page 4, line 10. These recitations are contradictory. Correction and/or clarification is necessary.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

Kent L. Bell